

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 KIMBERLY DOWLING, an individual, ) No.: 2:17-cv-01914-RSM  
11 )  
12 Plaintiff, ) STIPULATED PROTECTIVE ORDER  
13 vs. )  
14 )  
15 FRITO-LAY, INC., a Delaware corporation, )  
PEPSICO, INC., a North Carolina corporation, )  
JEFF MCCONNELL, an individual, TONY )  
PLESKACZEWSKI, an individual, and )  
DWAYNE ESTES, an individual, )  
Defendants. )

16 1. PURPOSES AND LIMITATIONS

17 Discovery in this action is likely to involve production of confidential, proprietary, or  
18 private information for which special protection may be warranted. Accordingly, the parties  
19 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The  
20 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket  
21 protection on all disclosures or responses to discovery, the protection it affords from public  
22 disclosure and use extends only to the limited information or items that are entitled to  
23 confidential treatment under the applicable legal principles, and it does not presumptively entitle  
24 parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things  
3 produced or otherwise exchanged:

- 4 • Plaintiff’s medical records;
- 5 • Confidential personal information of individually-named defendants, including  
6 financial or tax information, complete social security number, and/or other  
7 personally identifying information;
- 8 • Non-public, confidential personnel and/or human resources files, or other  
9 employment records, of any of Frito-Lay, Inc., PepsiCo, Inc. or Rolling Frito-Lay  
10 Sales, LP’s current or former employees that are not party to this lawsuit;
- 11 • Personal information of third parties, including personnel files, compensation and  
12 benefits information, medical and financial records of third-parties; and
- 13 • Defendants’ confidential and competitively sensitive information/documents,  
14 including budgets, business plans, marketing plans, salary information or  
15 documentation, contracts with employees and non-parties, overhead/cost  
16 information, and hiring strategies.

17 3. SCOPE

18 The protections conferred by this agreement cover not only confidential material (as  
19 defined above), but also (1) any information copied or extracted from confidential material;  
20 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any  
21 testimony, conversations, or presentations by parties or their counsel that might reveal  
22 confidential material. However, the protections conferred by this agreement do not cover  
23 information that is in the public domain or becomes part of the public domain through trial or  
24 otherwise.

1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
3 or produced by another party or by a non-party in connection with this case only for prosecuting,  
4 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
5 the categories of persons and under the conditions described in this agreement. Confidential  
6 material must be stored and maintained by a receiving party at a location and in a secure manner  
7 that ensures that access is limited to the persons authorized under this agreement.

8 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
9 ordered by the court or permitted in writing by the designating party, a receiving party may  
10 disclose any confidential material only to:

11 (a) the receiving party’s counsel of record in this action, as well as employees of  
12 counsel to whom it is reasonably necessary to disclose the information for this litigation;

13 (b) the officers, directors, and employees (including in house counsel) of the  
14 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
15 agree that a particular document or material produced is for Attorney’s Eyes Only and is so  
16 designated;

17 (c) experts and consultants to whom disclosure is reasonably necessary for this  
18 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (d) the court, court personnel, and court reporters and their staff;

20 (e) copy or imaging services retained by counsel to assist in the duplication of  
21 confidential material, provided that counsel for the party retaining the copy or imaging service  
22 instructs the service not to disclose any confidential material to third parties and to immediately  
23 return all originals and copies of any confidential material;

1 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
2 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
3 A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
4 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
5 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
6 under this agreement;

7 (g) the author or recipient of a document containing the information or a custodian or  
8 other person who otherwise possessed or knew the information.

9 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
10 referencing such material in court filings, the filing party shall confer with the designating party  
11 to determine whether the designating party will remove the confidential designation, whether the  
12 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
13 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
14 standards that will be applied when a party seeks permission from the court to file material under  
15 seal.

## 16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
18 or non-party that designates information or items for protection under this agreement must take  
19 care to limit any such designation to specific material that qualifies under the appropriate  
20 standards. The designating party must designate for protection only those parts of material,  
21 documents, items, or oral or written communications that qualify, so that other portions of the  
22 material, documents, items, or communications for which protection is not warranted are not  
23 swept unjustifiably within the ambit of this agreement.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
2 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
3 unnecessarily encumber or delay the case development process or to impose unnecessary  
4 expenses and burdens on other parties) expose the designating party to sanctions.

5 If it comes to a designating party's attention that information or items that it designated  
6 for protection do not qualify for protection, the designating party must promptly notify all other  
7 parties that it is withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
9 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
10 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
11 be clearly so designated before or when the material is disclosed or produced.

12 (a) Information in documentary form: (*e.g.*, paper or electronic documents and  
13 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
14 the designating party must affix the word "CONFIDENTIAL" to each page that contains  
15 confidential material. If only a portion or portions of the material on a page qualifies for  
16 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by  
17 making appropriate markings in the margins).

18 (b) Testimony given in deposition or in other pretrial or trial proceedings: the parties  
19 must identify on the record, during the deposition, hearing, or other proceeding, all protected  
20 testimony, without prejudice to their right to so designate other testimony after reviewing the  
21 transcript. Any party or non-party may, within fifteen days after receiving a deposition transcript,  
22 designate portions of the transcript, or exhibits thereto, as confidential.

23 (c) Other tangible items: the producing party must affix in a prominent place on the  
24 exterior of the container or containers in which the information or item is stored the word

1 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
2 the producing party, to the extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
4 designate qualified information or items does not, standing alone, waive the designating party’s  
5 right to secure protection under this agreement for such material. Upon timely correction of a  
6 designation, the receiving party must make reasonable efforts to ensure that the material is  
7 treated in accordance with the provisions of this agreement.

8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
10 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
11 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
12 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
13 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
14 original designation is disclosed.

15 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
16 regarding confidential designations without court involvement. Any motion regarding  
17 confidential designations or for a protective order must include a certification, in the motion or in  
18 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
19 conference with other affected parties in an effort to resolve the dispute without court action. The  
20 certification must list the date, manner, and participants to the conference. A good faith effort to  
21 confer requires a face-to-face meeting or a telephone conference.

22 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
23 intervention, the designating party may file and serve a motion to retain confidentiality under

24 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of

persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
2 MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently  
4 produced material is subject to a claim of privilege or other protection, the obligations of the  
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
6 provision is not intended to modify whatever procedure may be established in an e-discovery  
7 order or agreement that provides for production without prior privilege review. The parties agree  
8 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

9 10. NON TERMINATION AND RETURN OF DOCUMENTS

10 Within 60 days after the termination of this action, including all appeals, each receiving  
11 party must return all confidential material to the producing party, including all copies, extracts  
12 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
13 destruction.

14 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
15 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
16 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
17 work product, even if such materials contain confidential material.

18 The confidentiality obligations imposed by this agreement shall remain in effect until a  
19 designating party agrees otherwise in writing or a court orders otherwise.

20 //

21 //

22 //

23 //

24 //

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: February 21, 2018

s/ Peter Montine

Peter Montine, WSBA No. 49815  
Rocke Law Group, PLLC  
101 Yesler Way, Suite 603  
Seattle, WA 98104  
(206) 652-8670  
[peter@rockelaw.com](mailto:peter@rockelaw.com)  
Attorney for Plaintiff

6 DATED: Approved via 2/21/2018 email

s/ Kyle D. Nelson

Adam T. Pankratz, No. 50951  
Kyle D. Nelson, No. 49981  
Ogletree, Deakins, Nash, Smoak, & Stewart, P.C.  
800 5th Avenue, Suite 4100  
Seattle, WA 98104  
[adam.pankratz@ogletree.com](mailto:adam.pankratz@ogletree.com)  
[kyle.nelson@ogletree.com](mailto:kyle.nelson@ogletree.com)  
Attorneys for Defendants

11 PURSUANT TO STIPULATION, IT IS SO ORDERED.

12 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
13 documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any  
14 other court, constitute a waiver by the producing party of any privilege applicable to those documents,  
15 including the attorney-client privilege, attorney work-product protection, or any other privilege or  
16 protection recognized by law.

17 DATED this 23<sup>rd</sup> day of February, 2018.

19 

20 RICARDO S. MARTINEZ  
21 CHIEF UNITED STATES DISTRICT JUDGE

1  
2 EXHIBIT A

3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
5 [print or type full address], declare under penalty of perjury that I have read in its entirety and  
6 understand the Stipulated Protective Order that was issued by the United States District Court for  
7 the Western District of Washington on [date] in the case of **Kimberly Dowling v.Frito-Lay,**  
8 **Inc., Pepsico, Inc., Jeff McConnell, Tony Pleskaczewski, and Dwayne Estes..** I agree to  
9 comply with and to be bound by all the terms of this Stipulated Protective Order and I  
10 understand and acknowledge that failure to so comply could expose me to sanctions and  
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
12 any information or item that is subject to this Stipulated Protective Order to any person or entity  
13 except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the  
15 Western District of Washington for the purpose of enforcing the terms of this Stipulated  
16 Protective Order, even if such enforcement proceedings occur after termination of this action.

17  
18 Date: \_\_\_\_\_

19 City and State where sworn and signed: \_\_\_\_\_

20 Printed name: \_\_\_\_\_

21 Signature: \_\_\_\_\_

22 32979048.1